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THE LENGTH OF JUDICIAL OPINIONS

By Francis A. Leach, '76.

Judge Lamm of the Supreme Court of Missouri, in a characteristic prelude or "foreword", as he calls it, to a recent opinion (*Turner v. Anderson,* 139, S. W., 180,) makes a serious accusation against the Statutes of Missouri when he states, "The statute is the chief factor swelling the length of appellate opinions and causing them, now and then, to be much murmured against."

We presume the Judge alludes to murmurs from the members of the bar as the length of opinions and the cost to the profession of fast accumulating reports have not yet been seriously considered by the laity among the many charges that have recently been emphasized against lawyers in particular and the courts in general. (See Simon Fleischman of Buffalo before the New York State Bar Association, 1905; Emanuel M. Grossman of St. Louis, before the Missouri Bar Association, 1910, on "Some Reasons for the Growing Disrespect for the Law", *American Law Review,* July-August, 1911.)

And yet may not the verbosity or prolixity of judicial opinions be somewhat or indirectly accountable for those "delays of justice" of which we hear so much nowadays? Are they not responsible for some of the "weighty" briefs, "that codeless myriad of precedents" that add to the labors and consequent delays of the courts and the attendant costs?

The statute of Missouri to which Judge Lamm directs his critical attention is Section 2087 of the Revised Statutes of 1909, wherein it is provided, "In each case determined by the Supreme Court or Court of Appeals, or finally disposed of upon a motion, the opinion of the court shall be reduced to writing and filed in the cause, and shall show which of the judges delivered the same, and which concur therein or dissent therefrom."

Section 2088 of the same provides, "The opinion shall always contain a sufficient statement of the case, so that it may be understood without reference to the record and proceedings in the same."

The particular offense of these statutes is the requirement of a "statement" of the case so that it may be "understood, etc."

These sections were first enacted by the legislature of Missouri in 1871. Whence they were derived does not appear. They go

further than the constitution of that state which provides only (R. S. 1909, p. 104) that the opinion of each division of the Supreme Court shall be in writing and filed. They had received no judicial construction or criticism in Missouri before that of Judge Lamm.

California (*Houston v. Williams,* 13 Cal. 25, cited by Judge Lamm in *Turner v. Anderson*) and Arkansas (*Vaughn v. Harp,* 49 Ark. 160) have declared such provisions of their statutes unconstitutional, holding that the legislature can not require the Supreme Court to give the reasons of its decisions in writing, the constitutional duty of the court being discharged by the rendition of its decisions. Justice Stephen A. Field, subsequently of the Supreme Court of the United States, in behalf of the Supreme Court of California said (*Houston v. Williams, supra,*), in language which Judge Lamm characterizes as "animated": "It is but one of many provisions embodied in different statutes by which control over the judiciary department of the government has been attempted by legislation. To accede to it any obligatory force would be to sanction a most palpable encroachment upon the independence of the department."

It has also been held that the legislature has no authority to require the courts to prepare syllabi or to report decisions. (Ex. p. *Griffiths,* 118 Ind. 83; *Matter of Headnotes,* 43 Mich. 611.)

The constitution of Washington (Art. 4, sec. 20), which provides that every case submitted to a judge of a Superior Court for his decision shall be decided by him within ninety days from the submission thereof, would, undoubtedly, be subject to the same animated condemnation of Judge Field, although its object would seem to many to be most commendable and conducive to the benefit of litigants.

In short, it is apparently the holding of our courts that it is a judicial prerogative to shorten or lengthen judicial declarations or the time of rendering them with which no legislature or combination of men can interfere.

It, then, becomes a matter of duty or expediency with the courts as to the length or time of rendering of judicial opinions.

That both duty and expediency require speedy determination of causes submitted to the court for decision is too apparent to need discussion. In commenting on the provision of the Washington constitution heretofore referred to limiting the time for

rendition of decisions, the Supreme Court of Washington (*Demaris v. Barker,* 33 Wash. 200) has thus expressed itself:

"The law's delays is not a modern phrase. Judges of the old time were not wholly unlike some of their successors in office. They, too, were inclined to waver between two opinions, fearful to pronounce the one lest the other should be deemed the more powerful, and delays caused thereby have in all times been more or less prevalent and have always been regarded as something of an unmixed evil when viewed from the standpoint of a litigant or the public. It was to furnish a remedy for this that this clause of the constitution was adopted. It was thought that judges, who derived their authority from that instrument, would obey its behests, or, if they did not, that some means would be found to coerce obedience; or, indeed, it may have been thought that disobedience would be ground for an impeachment."

As to the length of reported judicial opinions, what do duty or expediency demand? Are we burdened with too long statements and opinions and, if so, can they be shortened and how?

Senator Root of New York, who might be considered an authority, has practically answered these questions in a recent address, as its president, to the New York State Bar Association.

"The mass of judicial reports," he said, in part, "has grown so great that it begins to seem as if before long we shall have to burn our books like the Romans and begin anew. And indeed, where decisions can be found in support of every side of every proposition, authority is in a great measure destroyed and we do begin anew in determining by the light of reason which authority shall be followed. I wish that our judges could realize officially what so many of them agree to personally—that restating settled law in new forms, however well it is done, complicates rather than simplifies the administration of the law, that the briefest of opinions usually answers the purpose of the particular case; and that the general interests of jurisprudence justify reasoned opinions only when some question of law is determined which has not been determined before by equal authority. On every side the increased complication of life calls for vigorous and determined effort to make the working of our governmental system more simple."

Senator Root has suggested the evil, generally recognized; and the remedy, brief opinions. The remedy seems simple; why is it not adopted?

Three general reasons may be given: reliance on stenographers; temptation to indulge the judicial sense of humor or taste for general literature; ignorance of the law.

Judges of to-day, with probably few exceptions, dictate their opinions to stenographers. Dictation is seldom conducive to condensation or conciseness of statement. Few men can dictate with that conciseness with which they can write, and dictation is less apt to be followed by condensation, or what newspaper men call "boiling it down."

Again, with the free use of mechanical devices such as typewriters, one is more apt to hand a pleading, an opinion, record evidence, etc., to the operator to be copied in full or at length, thus avoiding the labor of summarizing.

Take the late case of *Ives v. South Buffalo Ry. Co.* (201 N. Y. 271) in Senator Root's own State. The question before the court in that case was, to be sure, a novel, important and most interesting one, involving the constitutionality of an act passed by the New York Legislature in 1910 to amend the labor law of that State by making employers liable for compensation for injuries resulting to employees from a necessary risk or danger of employment, even where there has been no negligence on the part of the employer, providing the injury was not caused by the serious and willful misconduct of the employee. And yet, are not six and one-half pages of the statement of this case too much to take for quoting the entire statute, of which but a few clauses were necessary to understand the constitutional question involved? It may have been easier for a typewriter to copy this statute *in toto* than for a busy judge to summarize it.

Five hundred and seven pages of volume 218 of the Missouri Supreme Court are taken in what is known as the Standard Oil case. A perusal of this case will convince most lawyers that this case might well have been decided in less space by omission or condensation of pleadings, evidence and expressions of opinion. (See also *Childers v. Pickenbaugh,* 219 Mo. 376, with 92 pages; *Boyles v. Roberts,* 222 Mo. 613, with 174 pages.)

The opinion in the recent case of *Kopplin v. Quade* (145 Wis. 454) runs partly thus: "One Koppen was the owner of a thoroughbred Holstein-Friesian heifer which he duly christened Martha Pietertje Pauline. The name is neither euphonious nor musical, but there isn't much in a name anyway. Shakespeare (W.), *Romeo and Juliet,* Act II, Scene 2. Notwithstanding any

handicap she may have had in the way of a cognomen, Martha Pietertje Pauline was a genuine 'highbrow' having a pedigree as long and at least as well authenticated as that of the ordinary scion of effete European nobility who breaks into this land of democracy and equality and offers his title to the highest bidder at the matrimonial bargain counter. One Quade was the owner of a bull about one year old, born as lowly as the lowliest bull, in a hovel, reared in poverty, with no gleam of light or fair surroundings, without graces, actual or acquired, without name or fame. Nevertheless, this plebian was something of a 'social climber', and, having aspirations beyond his humble station in life, he wandered one day beyond the confines of his own pastures, and sought the society of the adolescent and unsophisticated Martha, contrary to the statute in such cases made and provided. As a result of this somewhat morganatic mesalliance, a calf was born. Kopplin then brought action for resulting damages and recovered $75. The evidence showed that a thoroughbred calf would be worth from $22.50 to $150, depending on its sex, markings, and other characteristics. Its sinister birth disqualified the hybrid calf born from becoming a candidate for pink ribbons at county fairs, and it was sold to a Chicago butcher for $7, and was probably served up as pressed chicken to the epicures in some Chicago boarding house."

While we can not help enjoying this refreshing relief from the ordinary dullness of judicial deliverances, it is a serious question whether such humor or possibly facetiousness is properly the part of the expression by a court of final resort of its conclusions of law.

Judge Lamm of the Supreme Court of Missouri, from whom we have already quoted, has embellished many of his opinions with quotations from lay writers which have been veritable oases among the dry recitals of legal precedents. In *Cook v. Newby* (213 Mo. pp. 493, 494) we find allusions to the Bible, Bret Harte, Paine, Volney, Voltaire, and liberal quotations from Shakespeare. They occupy nearly two pages. While we would certainly miss Judge Lamm's quite frequent excursions, we are constrained to think that they should not adorn the best conceived judicial opinions. Space has become more valuable than the best creations of general literature. (See also opinions of same judge in *Viertel v. Viertel,* 212 Mo. 577; *Ohlmann v. Sawmill Co.,* 222 Mo. pp. 72, 73; *Meriwether v. Publishers,* 224 Mo. 625; *Blake v. Meadows,* 225 Mo. 28; *Diener v. Chronicle,* 230 Mo. 629.)

That every judge does not know the settled law of the State or jurisdiction where he holds court is not surprising when we consider how few lawyers from whose number the judges are selected, in most cases by political methods and popular vote and without ascertained judicial ability, have that knowledge. Judge John F. Dillon, who made the first digest of Iowa Reports known as *"Dillon's Digest"*, once said that when he was elected district judge he entered upon the careful study of each and every case that had been before decided by the Supreme Court as they appeared in the reports, making notes as he proceeded and placing each under its appropriate head; that his sole purpose in doing this was to familiarize himself with what the Court had decided, in order that he might not run contrary thereto but be in harmony therewith; that he kept this up and added to it as additional reports appeared; that it occurred to him that by a little remoulding and enlarging it might be useful to the profession.

How many judges follow this practice and is it strange that we have too often redeterminations of determined questions of law through ignorance of what has been determined?

It is not the purpose of this article to show to what extent or where we are burdened with lengthy opinions or to particularly condemn the judiciary. We have many examples of model judicial opinions. The decisions generally of the United States Supreme Court may be cited as examples of such. And this notwithstanding that the Bell Telephone case takes the whole of Volume 126 of United States Supreme Court cases consisting of 584 pages.

But that there is room for improvement everywhere, that there is an emphatic demand for it everywhere as a part of the speedy and correct administration of the law, there can be no question. And it means for the judges—work, work, work.

Judge Scott, one of the early and most eminent of the judges of the Supreme Court of Missouri, noted for his conciseness, once asked a member of the Bar how long this lawyer thought it had taken him to write two lines of a certain opinion?

On the lawyer's expressing his inability to answer the question, "two weeks of hard labor," was Judge Scott's answer.

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